

(1997) 11 MAD CK 0160
In the Madras High Court

State of Tamil Nadu and Another

APPELLANT

Vs

B. Anop Bai and Another

RESPONDENT

Date of Decision : 28-11-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Tamil Nadu General Sales Tax Act, 1959 — Section 24, 24
Transfer of Property Act, 1882 — Section 100

Citation : (1998) 1 MLJ 445

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—Defendants in O.S. No. 254 of 1978 on the file of Subordinate Judge, Tirupattur, North Arcot are the appellants in the above appeal. The plaintiffs/respondents herein filed the said suit for setting aside the order of the second defendant dated 11.9.1978 and to raise the attachment on the schedule mentioned property and for injunction, restraining the second defendant from putting up the schedule mentioned property for sale for realisation of the sales tax arrears of the defaulters.

2. The case of the plaintiffs are briefly stated hereunder:

According to them, they are the absolute owners of the schedule mentioned property. They purchased on 25.9.1977. They are in possession of the suit property. Second defendant, who is the Deputy Commercial Tax Officer, Tirupattur, alleging that one T.P. Narayanaswamy and T.N. Subash are defaulters in the payment of the sale tax, issued notice on 28.10.1977 to the plaintiffs calling upon them to pay a sum Rs. 1,01,879.67 representing the arrears. The plaintiffs filed a claim application before the 2nd defendant denying their liability. The 2nd defendant issued an order to the plaintiffs on 11.9.1978 stating that the sale by the defaulters is not binding on the department and negating the claim of the plaintiffs. The plaintiffs have issued a notice u/s 80 of the Code of Civil Procedure. Hence the plaintiffs have filed the suit to set aside the order of the

2nd defendant dated 11.9.1978 and for injunction.

3. The defendants filed a written statement wherein it is contended that one T.P. Narayanaswamy and his son T.N. Subash were the partners of the firm Messrs. Kasthuri and Company, Jinnah Road, Tirupattur carrying on business in sewing machines, motor cycles and spare parts. For the year 1974-75 the said firm was assessed to sales tax of Rs. 1,389.15. The order was served on 17.2.1976. The tax was payable on or before 18.3.1976. Hence the said firm became defaulters on 18.3.1976. For the year 1975-76 the said firm was assessed to sales tax of Rs. 3,862.67. The order of assessment was passed on 31.1.1977. The firm and its partners became defaulters on 2.3.1977. The said Narayanaswamy and Subash were partners of another firm by name S.V. Traders, Kancheepuram. For the year 1973-74, the firm S.V. Traders was assessed to sales tax of Rs. 11,876. It was assessed to another sales tax of Rs. 8,983. The order was served on 7.8.1974. For the year 1974-75 the firm of traders was assessed to sales tax of Rs. 69,846. The order was served on 26.11.1976. For the year 1975-76 the firm was assessed to sales tax of Rs. 5,482. The order was served on 5.12.1976. The said firm and its partners became defaulters for the said three years. The Commercial Tax Officer, Chingleput sent a requisition to the 2nd defendant on 21.3.1977 to institute proceedings for the recovery of the sales tax arrears of Rs. 96,187 due by Messrs S.V. Traders.

3. It is further contended that u/s 24 of the Tamil Nadu General Sales Tax Act, 1959 if default is made the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the persons liable to pay the tax. The defaulters are also liable to pay penalty. The second defendant initiated proceedings under the Tamil Nadu Revenue Recovery Act. The suit house was attached and brought to sale after service of demand notice required as under the Act on the defaulters. The demand notice in Form I dated 30.7.1977 has been served on the defaulter Subash on 4.8.1977. After the receipt of the demand notice, the defaulters have executed a sale deed in respect of the said properties in favour of the plaintiffs, in order to defraud the defendants. The sale is not binding on the defendants. A copy of the notice dated 22.7.1978 was sent to the plaintiffs. The plaintiffs are not personally liable but the property purchased by them is subject to charge and is liable for the said arrears. The S.V. Traders has been assessed to sales tax of Rs. 5,793 for 1976-1977. The order of assessment was served on 7.4.1978. The said Subash on behalf of S.V. Traders in his letter, dated 22.9.1977 addressed to the Secretary, Revenue Department, Government of Tamil Nadu, had admitted the arrears of sales tax and requested to pay the amount in instalments. The plaintiffs filed the claim petition on 11.9.1978 before the second defendant, who had in his reply inti-mated about the charge over the suit property and the arrears of sales tax by the transferors. The plaintiffs are not bona fide purchasers for value without notice of the defect in title. The plaintiffs were aware of the arrears of sales tax. The plaintiffs and the defaulters are close friends. The sale deed has been created collusively to defeat and delay the realisation of the sales

tax arrears. The defendant does not admit that any consideration was paid towards the sale deed. The order of attachment was issued by way of abundant caution. The plaintiffs have not discharged any alleged earlier debts of transferors.

4. The second plaintiff was examined as P.W. I and they also examined 14 persons as P. Ws. 2 to 15 apart from marking Exs. A-1 to A-46 in support of their claim. On the other hand, the defendants have examined 8 persons as D. Ws. 1 to 8 and also marked Exs. B-1 to B-36 in support of their defence. The learned Subordinate Judge, Tirupattur, on the basis of the pleadings, after framing necessary issues and in the light of the oral and documentary evidence, decreed the suit with costs as prayed for in favour of the plaintiffs. Aggrieved by the decree of the learned Subordinate Judge, the unsuccessful defendants have filed the appeal as stated above.

5. I have heard Mr. N. Ravi, learned Additional Government Pleader for the appellants and Mr. V. Raghavachari, learned Counsel for the respondents.

6. Learned Additional Government Pleader, after taking me through the pleadings, oral and documentary evidence, particularly with reference to Ex. B-24 as well as Section 24 of the Tamil Nadu General Sales-Tax Act, 1959, submitted that the court below ought to have dismissed the suit. He further submitted that inspite of the fact that a charge had been created over the suit properties, the court below committed an error in setting aside the order of attachment made by the second defendant; hence prayed for interference in this appeal. On the other hand, the learned Counsel for the respondents/plaintiffs submitted that inasmuch as S.V. Traders is only a proprietary concern and T.P. Narayanaswamy has nothing to do with the said concern after noting that the plaintiffs being bona fide purchasers without notice, the court below has rightly decreed the suit and according to him, there is no merit in the appeal and prayed for dismissal of the same. I have carefully considered the rival submissions.

7. There is no dispute that the plaintiffs have purchased a house at door No. 58-A, Jinnah Road, Tirupattur Town under Ex. A-1 on 25.9.1977. The said property was under the attachment by the second de-fendant in view of sales tax arrears of one T.P. Narayanaswamy and T.N. Subash. T.N. Subash is the son of T.P. Narayanaswamy. It is the contention of the respondents/plaintiffs that they had purchased this property under bona fide impression and without notice regarding the sale tax arrears. In any event, according to them, the property was purchased from T.P. Narayanaswamy only and inasmuch as no sales tax is due to the Government, whatever the due or liability of T.N. Subash would not affect T.P. Narayanaswamy in disposing of his own property. There is no dispute that T.P. Narayanaswamy and his son T.N. Subash were the partners of the firm Kasthuri and Company, Jinnah Road, Tirupattur, carrying on business in sewing machine, motor cycle spare parts etc. It is the definite case of the defendants that for the year 1974-75 the said firm was assessed to the sales tax of Rs. 1,389.15. The order of assessment was passed on 31.1.1977 and served on 17.2.1976. As per

the said order, sales tax was payable within 30 days from the date of receipt. The said firm failed to pay the tax on or before 18.3.1976. Hence the said firm and its partners became, defaulters on 18.3.1976. Likewise for the year 1975-1976 the said firm was assessed to salestax of Rs. 3,862.67. The order of assessment was passed on 31.1.1977. Due to failure to pay tax the said firm and its partners became defaulters on 2.3.1977. The said Narayanaswamy and his son Subash were also part-ners of another firm by name S.V. Traders dealing business in sewing machines, motor cycle and spare parts at 502, Gandhi Road, Kancheepuram, For the year 1973-74 the said firm was assessed to sales tax of Rs. 11,876. The order of assessment was passed on 30.7.1974 and the order was served on 7.8.1974. For the year 1974-75 the said firm was assessed to sales tax of Rs. 69,846. The order of assessment was passed on 15.11.1976 and was duly served on 26.11.1976. Likewise for the year 1975-76 the said firm was assessed to sales tax of Rs. 5,482. The order of assessment was passed on 3.12.1976 and was duly served on 5.12.1976. Due to the failure to pay the said amount, the said firm and its partners became defaulters on 5.9.1974, 26.12.1976 and 3.12.1976 for 3 years respectively. The above factual position has not been disputed by any one. As stated earlier, it is the specific plea of the plaintiffs that the vendor under Ex. A-1 was not in arrears of any tax due. Moreover, it is their definite case that T.P. Narayanaswamy has nothing to do with S.V. Traders, which is a proprietary concern of his son Subash. By relying on Exs. B-3, B-30, B-32 and B-46 learned Counsel for the respondents herein submitted that S.V. Traders is only a proprietary concern and Subash alone is the properietor and T.P. Narayanaswamy has nothing to do with the said concern. In other words, according to them, inspite of tax arrears of Subash, T.P. Narayanaswamy is competent to dispose of his property in favour of any one. A perusal of Ex. A-I shows that though the property belongs to T.P. Narayanaswamy his son Subash has also joined in the execution. The above factual position clearly proves that both Narayanaswamy and Subash were defaulters of salestax from 1974-75 onwards in respect of two firms, namely, Kasthuri and Company and S.V. Traders. Now I shall consider the relevant provisions in Tamil Nadu General Sales Act, 1959. u/s 19 of the Act where any firm is liable to pay any tax, or other amount under the said Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment. Like-wise as per Section 24 of the said Act, if default is made on paying according to the notice of assessment, the whole of the amount outstanding on the date of de-fault shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax under the said Act. The defaulters are liable to pay penalty. Among all the sections, Section 24 is relevant which reads as follows:

24. Payment and recovery of tax(1) The tax assessed under this Act shall be paid in such man-ner and in such instalments, if any, and within such time, as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. If default is made in paying according to the notice of assessment, the whole of the amount outstanding on the date of default

shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax under this Act. (Italics supplied)

(2) Any tax assessed on, or any other amount due under this Act from, a dealer or person and any fee due from him under this Act, may without prejudice to any other mode of collection be recovered-

(a) as if it were an arrear of land revenue, or

(b) x x x x

Exs. B-1 to B-12 clearly prove that both the above said firm were assessed to sales tax and the firms as well as their partners were defaulters even from the year 1974-75. Under Ex. B-13, dated 14.6.1978 notice of attachment of the building was issued by the Deputy Commercial Tax Officer, Tirupattur to T.P. Narayanaswamy. Likewise under Ex. B-14, on the very same day sale notice was issued by the same authority and the same had been served on T.P. Narayanaswamy and Subash. Notice of sale u/s 7-A of the Act was issued by the Deputy Commercial Tax Officer under Ex. B-15, dated 14.6.1978 for the sale of the property of Narayanaswamy and another, the door No. bearing 58-A, Jinnah Road, Tirupattur which is the property covered under Ex. A-1. Since both the said Narayanaswamy and Subash failed to pay the sales tax inspite of various assessment orders, demand notice under Ex. B-23 dated 30.7.1977, Distraint order under Form No. 1 was issued by the Commercial Tax Officer, Tirupattur to T.P. Narayanaswamy, Kasthuri and Company, Tirupattur. Thereafter, by letter, dated 22.9.1977 which is marked as Ex. B-24, the said T.N. Subash requested the Secretary to Government, Revenue Department for some reasonable time for payment of arrears.

8. As stated earlier, the main objection of the plaintiffs is that T.P. Narayanaswamy has nothing to do with S.V. Traders and the same is only a proprietary concern of Subash. If such contention is established, the order of the second defendant attaching the house property covered under Ex. A-1 has to be set aside. It is true that the learned Counsel for the respondents by pointing out some of the documents, pleaded that S.V. Traders is only a proprietary concern. However, the documentary evidence filed on the side of the defendants clearly show that T.P. Narayanaswamy was also one of the partners in S.V. Traders also. As a matter of fact, the very same Subash had pleaded before the authorities that his father T.P. Narayanaswamy was also one of the partners in the said concern. Ex. A-6 clearly shows that both S.V. Traders and Kasthuri and Company were in arrears of sales tax from 1974.

Ex. A-6 reads thus:- "Rc. Clause 1248/77. Office of the Deputy Commercial Tax Officer, Tirupattur, N.A., District.

To Thiru S.S. Manian, B. SC, M.A., B.L., Advocate, No. 1-E.T. Govinda Rao Street, Tirupattur, N.A., Sir, Sub: TNGST Act 1959-Commercial Taxes Department-Office of the Deputy Commercial Tax Officer, Tirupattur--Arrears of

sales tax--Action under R.R. Act. Ref:- Your claim application dated 8.9.1978.

I am to inform you that the sales tax arrears of TVL.S.V. Traders, Kaneheepuram accrued on 17.7.1974 for 73-74 on 15.11.1976 for 1974-75 and on 3.12.1976 for 1975-76 and in respect of TVL. Kasthuri and Co., Tirupattur on 31.1.1976 for 1974-75 and on 3.3.1977 for 1975-1976. But the sale deed of the house property was completed on 25.9.1977 only.

Therefore, the Immovable properties of the de-defaulters, sold after the date of default, will be liable to Sales Tax arrears since a charge is created by operation of law. Hence the proceedings under R.R. Act can be instituted against the said properties. The sale by the defaulters is not binding on the state. sd/- xxx

Deputy Commercial Tax Officer, Tirupattur, N.A.," It is true that in Ex. A-46 there is a reference that T.N. Subash was a proprietor of S.V. Traders, Kaneheepuram. However, in the proceedings before the Board of Revenue filed by T.N. Subash (Ex. A-46), he himself has pleaded that the business was run as a partnership and that the provisional assessment for these months should have been made only on the partnership and not on the petitioner alone. In Ex. A-46 in para 3 it is stated thus:

3. The assessee filed revision petitions to the Deputy Commissioner, Madras, against these provisional assessments. His main contention was that the business was run as a partnership and that the provisional assessments for these months should have been made only on the partnership and not on the petitioner alone.

In para 4 also he has contended thus:

4. The petitioner has contended in these revision petitions that the firm is a partnership firm and that the assessment made on the petitioner, as the proprietor of the firm, is not correct. It is pleaded that for the purpose of assessment under the Income Tax Act the firm is treated as a part-nership and that the accounts of the firm would also show that it is a partnership. It was stated that recovery proceedings have been initiated against the petitioner alone because of this incorrect order.

A careful reading of the above averments in Ex. A-46 filed by the very same T.N. Subash clearly shows that he asserted that S.V. Traders is a partnership concern wherein T.P. Narayanaswamy was also one of the partners. Ex. B-6, dated 22.2.1978 which is a notice issued by the Deputy Commercial Tax Officer, Tirupattur, to T.P. Narayanaswamy. In that notice, Subash has signed in token of receipt of the said notice on behalf of T.P. Narayanaswamy. In Ex. B-15 which is also a notice of sale u/s 7-A of the Act issued by the Deputy Commercial Tax Officer, wherein both Narayanaswamy and Subash have signed. Ex. B-24, dated 22.9.1977 is a letter from T.N. Subash to the Secretary, Government Revenue Department, Fort St. George, Madras, wherein he has requested the Government to permit him to pay in instalments. No doubt relying on this, the learned

Counsel for the respondents contended that only T.N. Subash has requested the Government for postponement of action and repayment in instalments. The said documents. In Ex. B-25 both the names of Subash and T.P. Narayanaswamy have been specifically mentioned in column 4, Ex. B-26, dated 1.12.1975 relates to S.V. Traders, Kancheepuram, wherein both Subash and T.P. Narayanaswamy jointly declared that they have entered into a partner-ship in regard to the business known as S.V. Traders, Kancheepuram. In Ex. B-26 both of them have signed. The said document, namely, Ex. B-26 falsifies the case of the plaintiffs but strengthens the case of the defendants. since the said document goes to the root of the matter, I am hereunder extracting the same:

FORM PRESCRIBED UNDER THE TAMIL NADU GENERAL SALES TAX RULES, 1959, ISSUED UNDER THE TAMIL NADU GENERAL SALES TAX ACT, 1959 (Tamil Nadu Act I of 1959).

FORM IX

(See Rule 40)

We (name) 1. Thiru T.N. SUBASH, S/o T.P. Narayanaswamy; 2) Thiru T. RNarayanaswamy, S/O of M/s S.V. Traders, Kancheepuram (address) 502, Gandhi Road, Kancheepuram hereby declare that we have entered into partner-ship in regard to the business known as M/s S.V. Traders, Kancheepuram and carried on scooters (Mopeds Suvega) and parts and sewing machine and parts at 502, Kancheepuram and other places in the State of Tamil Nadu on and with effect from 1.4.1971 with shares as mentioned below and shall be jointly and severally responsible for the payment of the tax, fee or other amount leviable under the Act.

Name of the person.	Amount or nature of share in the business.	(1)	(2)	(1)
T.N. Subash.	(2) T.P. Narayanaswamy.	(sd/-)	T.N. Subash	(sd/-)
Narayanaswamy.	Date: 1.12.1975.	Signature.		

9. Ex. B-27 is the duplicate copy of Ex. B-26. B-36, dated 31.1.1976 is a true copy of the order of the Tamil Nadu Sales Tax Appellate Tribunal, Madras-1 in Tribunal Appeal Nos. 439 of 1975 and 440 of 1975. Both these appeals were filed by T.N. Subash against the orders of Appellate Assistant Commissioner (Commercial Taxes), Kancheepuram, relating to the assessment year 1973-74. The matter relates to S.V. Traders. Before the Sales-Tax Appellate Tribunal it was represented by the counsel that the appellant, viz., T.N. Subash conducted a business as a part-nership unit and that the authorities have been erroneously describing them as "sole proprietor. The statement made in para 8 is the relevant one which reads thus:

8. It was presented by the counsel that the appellants conducted business as a partnership unit and that the authorities have been erroneously describing them as "sole proprietor" page 306 (ledger) of 1973-74 shows that a net profit of Rs. 13,052.98 was derived and that it was apportioned equally between T.N. Subash

and T.P. Narayanaswamy. In the statement of particulars filed on 19.9.1973, both of them were declared as partners with half share for each. Page 199 of the assessment file of 1972-73 has the trial balance for 1972-73 and it shows the capital of T.N. Subash at Rs. 14,491.06 and T.P. Narayanaswamy at Rs. 14,458.55. Even in the assessment file for 1973-74, page 143 has the statement filed by the appellants describing both of them as partners. Page 47 has the Trial Balance for 1973-74 which shows a capital of Rs. 3,268.59 for T.N. Subash and of Rs. 20,822.88. for T.P. Narayanaswamy. A deed of partnership, dated 30.10.1971 was filed and this is found to have been signed by both declaring themselves as partners from 1.4.1971 "with the same style". For the registration applied on 12.8.1989 T.N. Subash declared himself as proprietor of "S.V. Traders". The rubber stamp made at the Commencement was continued to be used though the partnership came into existence from 1.4.1971. These details and documentary evidences give supports for the existence of the states partnership. We however feel that this is not a issue material for the circumstances of the present case before us as proper service on the assesseees are sufficiently shown.

A reading of the above recitals clearly shows that even according to T.N. Subash, his father, namely T.P. Narayanaswamy has interest over the business called S.V. Traders. The extracted portion by me disprove the argument of the learned Counsel for the respondents. Inasmuch as T.N. Subash himself has pleaded before the authorities in various documents that his father T.P. Narayanaswamy was also one of the partners of S.V. Traders and in view of the fact that there were tax arrears in respect of the said firm even from 1973-74, as per Section 24 of the Madras General Sales Tax Act, 1959, there shall be a charge on the properties of the person or persons or firm, and is they are liable to pay the tax under the Act. In the light of over whelming factual position as referred above, the conclusion of the court of which T.N. Subash was the sole proprietor" cannot be sustained. The court below failed to consider the material portions in the documents placed by the defendants in the form of documents.

9. By relying on the following decisions, namely, (1) Kanhaiya Lal v. State of Rajasthan and Ors. 86 S.T.C. 30 ; (2) State of Madhya Pradesh and Anr. v. Abhayakumar and Ors. 86 S.T.C. 88; (3) Hiralal v. State of M.P. and two others 67 S.T.C. 82; (4) State of Haryana v. Ramsingh 66 S.T.C. 62; (5) P. Kannamba and Ors. v. The Board of Revenue, (C. T), Madras and Anr. 19 S.T.C. 456 learned Counsel for the respondents submitted that the decree granted by the court below is perfectly in order and the order of attachment by the second defendant cannot be sustained. After carefully perusing the decisions referred to above, in the light of clenching evidence, namely, Exs. A-6, A-46, B-6, B-15, B-24. B-25, B-26, B-27 and B-36, I am of the view that none of the decisions support his contention. Since the factual position brought out by the defendants is clear, it is unnecessary for me to refer all the decisions.

10. The learned Additional Government Pleader has also brought to my notice

the recent decision of the Apex Court reported in *State Bank of Bikaner and Jaipur v. National Iron and Steel Rolling Corporation and Ors.* (1995) 96 S.T.C. 612. In that case, their Lordships of the Supreme Court had on occasion to consider the liability under Rajasthan Sales-Tax Act, 1954. By way of an amendment, Section 11 AAAA of the said Act was introduced by Rajasthan Government. Section 11-AAAA runs as follows:

11-AAAA Liability under this Act to be the first charge:- Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum, if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or such person.

This section is similar to Section 24 of the Madras General Sales Tax Act, 1959, which I have already extracted in the earlier part of my judgment. While construing the charge on the property of the person or persons, their Lordships have observed thus:

Under this section the amount of sales tax or any other sum due and payable by a dealer or any other person under the Rajasthan Sales Tax Act, 1954 is a first charge on the property of the dealer or of such person. It is on account of the provisions of this section that the Commercial Taxes Officer claimed priority for the recovery of the sales tax dues from the sale proceeds of the mortgaged property. The appellant, however, contended that since the mortgage in their favour is prior in point of time, their claim will have precedence over the claim of the sales tax authorities.

It is, therefore, necessary to consider the effect of Section 11-AAAA of the Rajasthan Sales Tax Act, 1954, on an existing mortgage in respect of the property of the dealer or the person liable to pay sales tax or other sums under the Rajasthan Sales Tax Act, 1954. Section 100 of the Transfer of Property Act deals with charges on an immovable property which can be created either by an act of parties or by operation of law. It provides that where immovable property of one person is made security for the payment of money to another, and the transaction does not amount to a mortgage, a charge is created on the property and all the provisions in the Transfer of Property Act which apply to a simple mortgage shall, so far as may be, apply to such charge. A mortgage on the other hand, is defined u/s 58 of the Transfer of Property Act as a transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced as set out therein. The distinction between a mortgage and charge was considered by this Court in the case of *Dattatreya Shanker Mote and Others Vs. Anand Chintaman Datar and Others*, . The court has observed (at pages 806-807) that a charge is a wider term as it includes also a mortgage, in that, every mortgage is a charge, but every charge is not a mortgage. The court has then considered the application of the second part of Section 100 of the Transfer of Property Act which, inter alia, deals with a charge not being enforceable against a bona fide transferee of the property for value

without notice of the charge. It has held that the phrase "transferee of property" re-fers to the transferee of entire interest in the property and it does not cover the transfer of only an interest in the property by way of a mortgage. In the present case we have to consider whether the statutory first charge which is created u/s 11-AAAA of the Rajasthan Sales Tax over the property of the dealer or a person liable to pay sales tax and/or other dues under the Rajasthan Sales Tax Act, is created in respect of the entire interest in the property when the dealer has created a mortgage on the property. In other words, will the statutory first charge have priority over an earlier mortgage. It was urged by Mr. Tarkunde, learned Counsel for the appellant-bank, that at the time when the statutory first charge came into existence, there was already a mortgage in respect of the same property. Therefore, the only property which was possessed by the dealer and/or person liable to pay tax or other dues under the Rajasthan Sales Tax Act, was eq-uity of redemption in respect of that property. The first charge would operate, therefore, only on the enquiry of redemption. The argument though ingenious, will have to be rejected. Where a mortgage is created in respect of any property, undoubtedly, an interest in the property, is carved out in favour of the mortgagee. the mortgagor is entitled to redeem his property on payment of the mortgage dues. This does not, however, mean that the property ceases to be the property of the mortgagor. The title to the property remains with the mortgagor. Therefore, when a statutory first charge is created on the property of the dealer, the property subjected to the first charge is the entire property of the dealer. The interest of the mortgagee is not excluded from the first charge. The first charge, therefore, which is created u/s 11-AAAA of the Rajasthan Sales Tax Act will operate on the property as a whole and not only on the enquiry of redemption as urged by Mr. Tarkunde.

We find support for this conclusion in the obser-vations made in Fisher and Lightwood's Law of Mortgage, 10th Edition at page 33 where the statutory charges are discussed. In dealing with a statutory charge in favour of rating authorities in respect of rating surcharges for unused commercial buildings under the General Rate Act, 1967, it is stated that "a statutory charge has priority to be interest of the mortgage under a mortgage existing when the charge arose". In the case of Westminster City Council v. HaymarketPublishing Ltd. (1981) 2 A.E.R. 555 (CA) the English Court of Appeals was required consider whether a statutory charge on the property under the Gen-eral Rate Act would have priority over a legal mortgage on the property existing when the charge came into being. It was argued that the charge would be only on the mortgagor-owner's interest in the property, i.e., on the enquiry of redemption. The court negated this contention. It held that, "charge on the land" impose for an unpaid surcharge was hot confined to a charge on the owner's interest in the premises when the charge arose, but extended to a charge on all the estates and interests in the premises existing when the charge arose. The rating authority's charge would have priority over the bank's interest as a mortgagee.

In the present case, the section creates a first charge on the property, thus

clearly giving priority to the statutory charge over all other charges on the property including a mortgage. The submission, therefore, that the statutory first charge created by Section 11-AAAA of the Rajasthan Sales Tax Act can operate only over the equity of re-demption, cannot be accepted. The charge operates on the entire property of the dealer including the interest of the mortgage therein.

Looked at a little differently, the statute has created a first charge on the property of the dealer. What is meant by a "first charge"? Does it have precedence over an earlier mortgage? Now, as set out in *Dattatreya Shanker Mote and Others Vs. Anand Chintaman Datar and Others*, , a charge is a wider term than a mortgage. It would cover within its ambit a mortgage also. Therefore, when a first charge is created by operation of law over any property, that charge will have precedence over an existing mortgage.

The recent pronouncement of the Apex Court referred above is directly applicable to the facts of our case. As a matter of fact, Their Lordships have also considered the defence of the purchaser u/s 100 of the Transfer of Property Act. Their Lordships have made it clear that "a charge is a wider term than a mortgage". It is further held that "when a first charge is created by operation of law over any an existing mortgage". I have already observed that if there is a default in paying according to the notice of assessment, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax u/s 24 of the Madras General Sales Tax Act, 1959. In view of the categorical pronouncement of the Apex Court which is directly on this point, the contra conclusion arrived by the court below cannot be sustained.

11. By relying on a decision reported in *K. Nagammal v. The Joint Commercial Tax Officer, Karur South, Karur 31 S.T.C. 607* , the learned Counsel for the respondents made a faint argument that it is not open to the defendants to initiate proceedings to recover sale tax due as if it were an arrear of land revenue. Section 24(2)(a) of the Madras General Sales Tax Act, 1959, specifically enables the authority constituted under the Act without prejudice to any other mode of collection the tax due may be recovered as if it were arrear of land revenue. In view of the clear provision in the Act, the decision cited by the learned Counsel for the respondents may not be helpful to his case.

12. A perusal of the pleadings of both parties as well as evidence clearly shows that the plaintiffs were very well aware of the sales tax arrears from 1973-74 and knowing fully well they have purchased the property from T.P. Narayanaswamy. The vendor of the plaintiffs has also deliberately sold the property and obtained the sale proceeds without disclosing the tax arrears to the plaintiffs. No doubt it is contended by the learned Counsel for the respondents that from and out of the sale consideration under Ex. A-I some of the debts of the vendors have been discharged by the plaintiffs. It is immaterial in view of Section 24 of the Act and if any one failed to pay the tax within such time as may

be specified in the notice of assessment within 21 days from the date of service of notice and if default is made in paying according to the notice of assessment, the whole of the amount outstanding on the date of the default shall become immediately due and shall be charged on the properties of the person. Therefore, in the words of the Supreme Court in *The State Bank of Bikaner and Jaipur v. National Iron and Steel Rolling Corporation Ltd.* (1995) 96 S.T.C. 612 when a first charge is created by operation of law over any property, that charge will have precedence". As a matter of fact, the court below having concluded that a charge had been created by operation of law, on an erroneous view, came to the conclusion that the plaintiffs are protected u/s 100 of the Transfer of Property Act. The decision in (1995) 96 S.T.C. 612 is also the answer for this question. Further, a perusal of the entire oral and documentary evidence also shows that the defaulters, namely, T.P. Narayanaswamy and his son T.N. Subash in order to escape from the tax liability, after knowing that in view of the default committed by them and a charge has been created as per Sec. 24 of the Act, with a fraudulent intention sold the only property in favour of the plaintiffs. In such a circum-stance, the order of attachment with regard to the said property by the second defendant is well-founded.

13. In the light of what is state above, the suit filed by the plaintiffs in O.S. No. 254 of 1978 is dismissed with costs and the appeal filed by the state and the Deputy Commercial Tax Officer, Tirupattur, is allowed with costs.